IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

DENISE HOLLOW,

Plaintiff,

vs.

NORFOLK SOUTHERN RAILWAY COMPANY,

Defendant,

CIVIL ACTION FILE NO: ____________________

JURY TRIAL REQUESTED

FIRST AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL

NOW COMES Plaintiff, Denise Hollow, and submits her Complaint against the above named Defendant based on the following grounds:

JURISDICTION

1.

This is an action for gender discrimination in violation of Title VII ("Title VII"), 42 US.C. § 2000e 2000e *et seq.* The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1331.

VENUE

2.

Venue is properly laid in this Court pursuant to 28 U.S.C. § 1391 since it is the district where the events giving rise to the claims occurred.

3.

All conditions precedent to jurisdiction under Title VII have occurred or have been complied with; specifically Ms. Hollow filed a timely charge of discrimination with the Equal Employment Opportunity Commission [EEOC], the Notice of Right to Sue for Plaintiff’s Charge was issued by the EEOC on June 3, 2009, and Ms. Hollow has brought suit with ninety (90) days of receipt of the Notice of Right to Sue.

PARTIES

4.

Plaintiff, Denise Hollow, is a female resident of the State of Georgia and is entitled to bring actions of this type and nature.

5.

Defendant, Norfolk Southern Railway Company, is a private corporation created and existing under the laws of the State of Virginia, and is amenable to suits of this kind and nature. Norfolk Southern Railway Company may be served with process via registered mail upon its attorney, Scott Smith, at his business address of Fisher & Phillips LLP, 1500 Resurgens Plaza, 945 East Paces Ferry Road Atlanta, GA 30326.

FACTUAL ALLEGATIONS

6.

Until her discharge on October 16, 2008, Plaintiff, Denise

Hollow, had been continuously employed by Defendant since 1999.

7.

On September 12, 2008, Plaintiff, Denise Hollow was employed by Defendant as a crew dispatcher at Defendant's Crew Management Center located in Fulton County, Georgia and the jurisdiction of this Court.

8.

On September 12, 2008 at approximately 8:53 a.m., Plaintiff, Denise Hollow, while at work with Defendant, received an electronic mail message or "e-mail" from her fellow employee and male superior, Richard J. Dzurek, also while at work with Defendant, via Defendant's electronic mail system that involved partial nudity and allegedly lewd humor; Richard J. Dzurek also sent the same e-mail at the same time to other employees of Defendant via Defendant's electronic mail system.

9.

On September 12, 2008 at approximately 11:09 a.m., Plaintiff, Denise Hollow, while at work with Defendant, transmitted the e-mail she had received from her superior, Richard J. Dzurek, to others via Defendant's electronic mail system.

10.

On October 16, 2008, Plaintiff, Denise Hollow, was terminated by Defendant for "transmitting sexually explicit, offensive and inappropriate material using the NS [Norfolk Southern] electronic mail system" allegedly in violation of Defendant's Safety and General Conduct Rule 1 and Defendant's Thoroughbred Code of Ethics arising out of the transmission of the September 12, 2008 e-mail she had received from her fellow employee and superior, Richard J. Dzurek.

11.

On September 12, 2008, Defendant's Safety and General Conduct Rule 1 and Defendant's Thoroughbred Code of Ethics applied equally to Plaintiff, Denise Hollow and her fellow employee and superior, Richard J. Dzurek.

12.

Although Defendant's employee, Richard J. Dzurek sent the same e-mail using Defendant's electronic mail system as sent by Plaintiff, Denise Hollow, and Defendant's Safety and General Conduct Rule 1 and Defendant's Thoroughbred Code of Ethics applied equally to Plaintiff, Denise Hollow and Richard J. Dzurek, Defendant did not terminate Richard J. Dzurek for allegedly "transmitting sexually explicit, offensive and inappropriate material using the NS electronic mail system" on September 12, 2008.

13.

The real reason for Plaintiff, Denise Hollow's termination is gender discrimination.

SUBSTANTIVE ALLEGATIONS

14.

Paragraphs 1 through 13 are incorporated herein by this specific reference.

15.

Title VII prohibits employers from engaging in practices that discriminate on the basis of gender. 42 U.S.C. § 2000e-2(a).

16.

Plaintiff, Denise Hollow, is a member of a protected class.

17.

On October 16, 2008, Plaintiff Denise Hollow, was subjected to an adverse employment action by Defendant because she is female - - termination - - in contrast with a similarly situated male employee - -Richard J. Dzurek - - who is outside the protected class and who was not terminated from his employment by Defendant.

18.

Plaintiff, Denise Hollow's termination by Defendant on October 16, 2008 constitutes gender discrimination in violation of Title VII, 42 U.S.C. § 2000e-2(a).

19.

Defendant's actions were willful, deliberate, and intended to cause Plaintiff harm and/or were committed with reckless disregard of the harm caused to Plaintiff, in derogation of her federally protected rights

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Court:

(a) Take jurisdiction of this matter;

(b) Declare that Plaintiff's rights under Title VII have been violated by Defendant.

(c) Award Plaintiff all back pay and future pay and lost benefits arising from Defendant's unlawful discrimination;

(d) Award Plaintiff pre-judgment interest;

(e) Award Plaintiff liquidated damages;

(f) Award Plaintiff compensatory damages in an amount to be determined by the enlightened conscience of the jury to compensate Plaintiff for the mental and emotional distress she has suffered as a result of Defendant's discriminatory conduct.

(g) Award Plaintiff punitive damages against Defendant;

(h) Award Plaintiff her costs and expenses of this action, including reasonable attorney's fees as authorized by law;

(i) Grant a trial by Jury; and

(j) Award such other and further relief as the Court deems just and proper.

Respectfully submitted this 7th day of October, 2009.

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Arvin J. Pearlman

ALYSA FREEMAN, P.C.
Law Office of Alysa Freeman, P.C.
1827 Independence Square
Atlanta, Georgia 30338
(770) 407-6000
af@alysafreeman.com
ATTORNEY FOR PLAINTIFF

Arvin J. Pearlman (P18743)
Arvin J. Pearlman and Associates
24725 W. 12 Mile Road, Ste 220
Southfield, Michigan 48034
(248)356-5000
apearlman@pearlpi.com
ATTORNEY FOR PLAINTIFF (*Pro Have Vice* admission granted)